

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. **77-1290**

WILLIAM SCOTT SHEPHERD,

Petitioner,

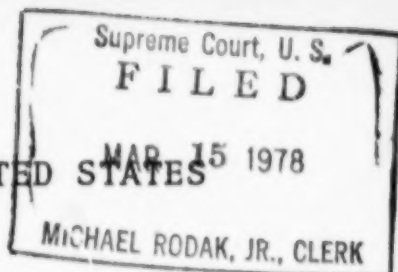
v.

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

HAYES & HUME
BARRY B. LANGBERG
132 South Rodeo Drive
Beverly Hills, California 90212
Attorneys for Petitioner



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. _____

WILLIAM SCOTT SHEPHERD,

Petitioner,

v.

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA,

SECOND APPELLATE DISTRICT,

DIVISION FOUR

To the Honorable, the Chief Justice and
Associate Justices of the Supreme Court
of the United States:

William Scott Shepherd, the petitioner
herein, prays that a Writ of Certiorari

issue to review the judgment of the Court
of Appeal of the State of California,
Second Appellate District, Division Four,
entered in the above-entitled case on
October 19, 1977. Petition for Rehearing
denied November 7, 1977. Petition for
Hearing in the Supreme Court of the State
of California denied December 15, 1977.

OPINIONS BELOW

The opinion of the Court of Appeal of
the State of California, Second Appellate
District, Division Four, is reported at
74 C.A.3d 334 (1977), and printed in
Appendix "A" hereto, page 9. The
opinion of the Appellate Department of
the Superior Court of the State of
California for the County of Los
Angeles is printed in Appendix "A"
hereto, page 21.

JURISDICTION

The judgment of the Court of Appeal

of the State of California, Second Appellate District, Division Four, was entered on October 19, 1977. A timely Petition for Rehearing was denied on November 7, 1977 (Appendix "A", page 29). A Petition for Hearing to the Supreme Court of the State of California was denied on December 15, 1977 (Appendix "A", page 30). The jurisdiction of the Supreme Court is invoked under 28 U.S. Code §1257, subdivision 3.

QUESTIONS PRESENTED

1. Whether Los Angeles Municipal Code §63.51(k), in forbidding the offering for sale of any item within the limits of any public park or recreational facility under the control or management of the Los Angeles Memorial Coliseum Commission, constitutes an infringement of petitioner's right to free speech in violation of the First Amendment.

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

1. First Amendment to the United States Constitution printed in Appendix "B" hereto, page 31.
2. Los Angeles Municipal Code §63.51(k) printed in Appendix "B" hereto, page 32.
3. Los Angeles Municipal Code §42.03 printed in Appendix "B" hereto, page 33.

STATEMENT OF THE CASE

Petitioner was convicted under Los Angeles Municipal Code §63.51(k) in the Municipal Court, County of Los Angeles, State of California. Prior to trial petitioner filed a demurrer to the complaint asserting that the ordinance under which petitioner was prosecuted was an unconstitutional violation of his First Amendment rights. Said demurrer was overruled. Subsequent to the convic-

tion in Municipal Court, petitioner appealed to the Appellate Department of the Superior Court, County of Los Angeles, State of California, and said Appellate Department reversed the judgment of conviction in an opinion certified for publication and filed on July 1, 1977, which opinion is printed in Appendix "A" hereof at page 21.

On July 14, 1977, Division Four of the Second Appellate in the Court of Appeal of the State of California filed an order pursuant to Rule 62(a) of the California Rules of Court transferring this case to the Court of Appeal for hearing and decision in order to settle important questions of law. On October 19, 1977, the Court of Appeal of the State of California, Second Appellate District, Division Four, filed its opinion, certified for publication, affirming the judgment of the Municipal

Court.

A Petition for Rehearing was timely filed in the Court of Appeal, which petition was denied. A Petition for Hearing in the Supreme Court of the State of California was timely filed. Said petition was denied on December 15, 1977.

REASONS FOR GRANTING WRIT

Section 63.51(k) constitutes an absolute and complete abridgment of the First Amendment right of petitioner to offer amusement tickets for sale at face value. Petitioner herein was convicted for offering for sale three tickets to a football game to be played by the Los Angeles Rams in the Los Angeles Memorial Coliseum. The only testimony presented by the People in the trial court was that petitioner offered for sale three tickets at face value. There was no evidence of any kind whatsoever that petitioner actually made a sale of any tickets. Los

Angeles Municipal Code §63.51(k) prohibits petitioner from selling his tickets on the grounds controlled by the Coliseum Commission without obtaining written consent. An undisputed fact, acknowledged by the District Court of Appeal in its opinion, is that it is impossible for petitioner to obtain the written permission of the Coliseum Commission. In addition, Los Angeles Municipal Code §42.03 unequivocally and absolutely prohibits petitioner from offering to sell his tickets on any public street, sidewalk, park or other public place or any place which is open to the public. Therefore, petitioner is effectively precluded and restrained from offering these tickets for sale at face value anywhere in the City of Los Angeles. The rulings of this court in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., (1976)

425 U.S. 748; 96 S.Ct. 1817, and Linmark Association Inc. v. Township of Willingboro, 429 U.S. 938; 97 S.Ct. 1614 (1977), are applicable. The semi-commercial speech engaged in by petitioner is subject to the protection of the First Amendment and is subject only to reasonable regulations as to time, place and manner. In addition, petitioner is entitled to offer for sale and sell the items of personal property in question in a reasonable and practical manner. The alternatives left under the Municipal Code sections are far from satisfactory. Petitioner not only has no practical method of disposing of these items, but has no method at all of offering them for sale to the public.

March 13, 1978

Respectfully submitted,

HAYES & HUME

By Barry B. Langberg
Counsel for Petitioner

OCT 2 1977

2.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,)	Crim. No. 30932
)	(Superior Ct. No. CR A 14663;
Plaintiff and)	Municipal Ct. No. 31534109)
Respondent,)	
)	
vs.)	COURT OF APPEAL - SECOND DIST.
)	FILED
WILLIAM SCOTT SHEPHERD,)	OCT 19 1977
)	CLAY ROBBINS, JR. <i>Clerk</i>
Defendant and)	
Appellant.)	<i>Deputy Clerk</i>

APPEAL from a judgment of the Municipal Court of
the Los Angeles Judicial District. Alan G. Campbell, Judge.
Affirmed.

Hayes & Hume and Barry B. Langberg for Defendant
and Appellant.

Burt Pines, City Attorney, George C. Eskin, Chief
Assistant City Attorney, Ward G. McConnell, Assistant City
Attorney, and James H. Hodges, Deputy City Attorney, for
Plaintiff and Respondent.

This appeal was transferred to this court under
rules 62-29, California Rules of Court, to settle an
important issue of law, that is, whether a Los Angeles
Municipal Code section relating to the sale of merchandise
in public parks is constitutional.

Defendant was convicted of offering to sell three
football tickets upon the premises of the Los Angeles
Memorial Coliseum, in violation of Los Angeles Municipal
Code section 63.51, subdivision (k), which reads as follows:

"Within the limits of any public park or recrea-
tional facility in the City of Los Angeles under the
control, operation or management of the Board of
Recreation and Park Commissioners, the Los Angeles
County Department of Parks and Recreation or the
Los Angeles Memorial Coliseum Commission, no person
shall:

"

"(k) Sell or offer for sale any merchandise,
article or thing of any kind or nature whatsoever
unless such person possesses a written consent of
said board, department or commission."

The evidence showed that defendant was a student who had come to the Coliseum to see a professional football game, and brought with him three extra tickets belonging to his father who had decided not to use them. Defendant was offering them for sale at face value, and he had no permission from the Coliseum Commission. Warning signs were posted in the vicinity stating that resale of tickets was illegal. A notice on the back of the ticket referred to Los Angeles Municipal Code section 42.03 which prohibits a sale of tickets within a public park except from a building or ticket booth.

No question is raised as to the sufficiency of the evidence to support the conviction.

Before discussing the issues argued on this appeal it is useful to place the challenged ordinance in context in the system of municipal government. Section 63.51 is headed "park regulations" and lists a number of activities which are forbidden in parks and recreation facilities within the city. Subdivision (k) does not itself attempt to define the limits of sales activity within a park.

Rather, it is a penal ordinance providing a sanction against sales activities which are not authorized by the board which is entrusted with the management of the park.

The Los Angeles City Charter, in sections 170 and 171, places the management of city parks in the control of the Department of Recreation and Parks, headed by a Board of Recreation and Parks Commissioners. These charter sections define the powers of the department and the limitations upon its power to allow the use of city parks for other than recreational purposes.

The Los Angeles Memorial Coliseum, though within the City of Los Angeles, is under the management of the Los Angeles Memorial Coliseum Commission, which was created by a joint powers agreement of the City of Los Angeles, the County of Los Angeles and the Sixth Agricultural Association under Title 1, Division 7, Chapter 5 (commencing with section 6500) of the Government Code. We take judicial notice of that joint powers agreement.

That agreement creates a Coliseum Commission as an entity which is for some purposes separate from the

parties to the agreement. (Gov. Code, § 6507.) The Commission is given the power, duty and authority to manage, operate and control the Coliseum and other premises placed under its jurisdiction by the parties to the agreement. The agreement empowers the Commission to lease, license, use or permit the use of the Coliseum for competitive sports and other recreational activities for the public benefit.^{1/}

1 Paragraph 12 of the joint powers agreement provides: "The Commission shall have power and authority, and it shall be its duty with respect to the Coliseum, proposed sports arena, pavilion, stadium or other facility now existing or hereafter brought within the jurisdiction of the Commission: . . . (f) To lease, license, rent, use, or permit the use of any such facility, for competitive sports, athletics, games, pageants, parades, plays, celebrations, patriotic gatherings, public recreation, motion picture production, or public gatherings, or such other events as are deemed appropriate, or for Municipal, County or District affairs, and particularly to develop and promote a wider use of the Coliseum, sports arena, pavilion, stadium or other facility, through the presentation of festivals, pageants, games, exhibits, industrial, horticultural or agricultural shows, conventions, exhibitions and productions of a local, regional, national or international character, primarily to the end that the citizens and public generally may enjoy and receive the greatest benefit possible from the Coliseum, sports arena, pavilion or stadium or other facility, and the City, the County and the District may more effectively exploit their climatic, geographical, recreational, cultural, and commercial resources and advantages;"

This statement of powers provides the standards by which the Commission must select the individuals and groups who will be authorized to transact business on the Coliseum premises. A prohibitory ordinance such as Municipal Code section 63.51 serves the purpose of protecting the Coliseum, its licensees and the public from an invasion by unauthorized vendors and others whose use of the premises would be incompatible with the normal function of a park.

Defendant is doubtless correct in his assumption that the prohibition of unauthorized sales on Coliseum grounds amounts to an absolute prohibition as to him. The People do not contend there is any procedure in existence whereby a holder of three extra tickets may obtain a license to sell them at the Coliseum entrance. But it does not follow that the limitation upon the use of Coliseum grounds for business purposes is unconstitutional as applied to him.

Defendant's conduct, attempting to sell three surplus tickets, seems harmless enough when viewed in isolation. But the city council, in enacting the ordinance, was entitled to view a larger problem. The Coliseum and its

surrounding land is maintained for the use of the general public for recreation and amusement. The unregulated use of that area by peddlers of tickets or other property would add to congestion, annoyance and inconvenience in areas where crowds must be moved rapidly and safely. Persons with tickets for sale may be expected to intrude themselves along the most heavily travelled pathways, audibly or visually demanding the attention of the tens of thousands who approach the Coliseum gates within a short period of time. An ordinance which attempted to distinguish between the casual vendor and the commercial operator might well be ineffective due to the practical problems of identification. Rather than to subject the Coliseum's visitors to a gauntlet of ambulant vendors, the city council could reasonably conclude that all sales should be prohibited except those by licensed concessionaires, whose places of operation and business methods are subject to the Commissioners' control.^{2/}

2 In People v. Van Wong (1958) 165 Cal.App.2d Supp. 821 the Appellate Department of the Los Angeles Superior Court held unconstitutional a former version of Municipal Code section 42.03, which forbade selling tickets upon a street or park within 250 feet of the Coliseum. The opinion of that court stated at page 824: "It seems patently discriminatory to hold that sales may be made at a ticket booth on

The power of the city to protect its parks against unauthorized commercial use must be distinguished from the use of the police power to regulate either the conduct of business on private property, (see, e.g., Sunset Amusement Co. v. Board of Police Commissioners (1972) 7 Cal.3d 64) or to regulate the exercise of constitutionally protected free speech. Defendant does not contend that his tickets have any content protected by the First Amendment,^{3/} but he asserts that his speech, offering tickets for sale, is constitutionally protected. The cases upon which he relies do not support

the public grounds, but cannot be made in a single instance from a citizen's pocket. The former will give rise to the accumulation of crowds, the impedance of passage; the latter would do neither. Peanuts, popcorn, chewing gum, programs, or newspapers could be sold but a ticket cannot. This clearly is the type of discrimination which invalidates an ordinance, whose restrictions must have a reasonable and nondiscriminatory relationship to the public's right of use of streets and public grounds, and where the classification is not based on any inherent differences relating thereto."

The quoted passage reflects judicial fact-finding on the subjects of park management and crowd control. Insofar as Van Wong is based upon the distinction between selling tickets and selling peanuts, it is inapposite, since the ordinance involved here applies to both. Despite the view of the Van Wong court, we do not regard it as unreasonable or improper for the Coliseum Commission and the Los Angeles City Council to determine that the Coliseum grounds should not be made available to casual sellers of tickets or other items.

3 We need not decide whether section 63.51, prohibiting sales of merchandise, could be construed to cover sales of newspapers or other printed media of communication. (See Welton v. City of Los Angeles (1976) 18 Cal.3d 496, 506.) As to that we express no opinion.

him.

Va. Pharmacy Bd. v. Va. Consumer Council (1976) 425 U.S. 748 held unconstitutional a statute prohibiting pharmacists from advertising prices. The Supreme Court declared that speech which does no more than propose a commercial transaction may nevertheless have constitutional protection, but that it may be subject to reasonable regulations as to time, place and manner. The Virginia statute was objectionable as prohibiting absolutely the publication of information which would serve the public interest.

In the case here, the conduct which the statute seeks to eliminate is the intrusion of the seller, and his effect upon the safety, comfort and enjoyment of the crowds of people streaming into the Coliseum. The purpose and effect of the ordinance is not to censor or suppress the content of the seller's message, which may lawfully be communicated elsewhere. The limitation upon the use of the park for sales solicitation is, under the circumstances, a reasonable place limitation based upon a significant governmental interest.

McKay Jewelers, Inc. v. Bowron (1942) 19 Cal.2d

595 also deals with a factually distinguishable situation. The issue was the constitutionality of an ordinance prohibiting solicitation from any doorway opening onto a public sidewalk. The case came up upon a demurrer to a complaint, the allegations of which were thus deemed to be true. Those allegations were that plaintiffs operated retail stores, that they engaged in the practice of speaking to passers-by who paused to inspect merchandise on display in the windows, that all soliciting was done in a quiet and dignified manner, and that at no time did the plaintiffs' employees step off their private premises to engage in such conversations. The Supreme Court held that that complaint stated a cause of action for an injunction prohibiting the city from interfering with the alleged conduct. Of particular interest here is the language of the Supreme Court distinguishing between public and private property as a place of business. The court said (at p. 603):

"Respondents also cite and rely on the cases of Williams v. Arkansas, 217 U.S. 79 [30 S.Ct. 493, 54 L. Ed. 673, 18 Ann. Cas. 865] and In re Barmore, 174 Cal. 286 [163 Pac. 50]. The Williams case upheld

legislation prohibiting drummers from soliciting business on trains. The Barmore case upheld an ordinance prohibiting the solicitation of business for the transportation of persons or baggage in depots. This brief reference to those cases is sufficient to distinguish them from the situation now under consideration. Travelers would have no alternative but to face and endure the persistent solicitation on trains or in depots, and legislation prohibiting such activity is undoubtedly of great benefit to the peace and convenience of the traveling public. On the other hand, in the instant case, if a person does not desire to listen to the importunities of appellants, he need only pass on, as appellants confine their activities to their own private properties."

What has been said above answers defendant's contention that the ordinance interferes with his right to dispose of personal property. He may dispose of it, but he is not entitled to use the Coliseum for that purpose.

The same reasoning also refutes defendant's contention that the city ordinance is pre-empted by Penal Code section 346, which prohibits ticket scalping. The subject and purpose of the city ordinance is not to regulate ticket sales as such, but to limit business activities on public property dedicated to recreational use. The use of a city park is a municipal affair (see Simons v. City of Los Angeles (1976) 63 Cal.App.3d 455, 468) and the city's park regulations are not pre-empted by section 346.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

FILES, P.J.

We concur:

KINGSLEY, J.

DUNN, J.

sd

RECEIVED

JUL 5 1977

FILED

JUL 1 - 1977

John L. Conneran, Acting County Clerk

B. R. Seal
By B. R. SEAL, Deputy

CERTIFIED FOR PUBLICATION

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,) Superior Court No. CR A 14663
Plaintiff and Respondent,) Municipal Court of the
vs.) Los Angeles Judicial District
WILLIAM SCOTT SHEPHERD,) No. 31534109
Defendant and Appellant.) OPINION AND JUDGMENT

Appeal by defendant from judgment of the Municipal Court, Alan G. Campbell, Judge.

Judgment reversed.

For Appellant - Hayes & Hume
By Barry B. Langberg

For Respondent - Burt Pines, City Attorney
George C. Eskin, Chief Assistant City Attorney
Criminal Branch
Ward G. McConnell, Assistant City Attorney
Chief Appellate Section
By James M. Hodges, Deputy City Attorney

-oOo-

Appellant was convicted of selling three football tickets in a public park, without a permit, in violation of Los Angeles Municipal Code section 63.51(k). The ordinance in question reads as follows:

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APPENDIX "A"

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"Within the limits of any public park or recreational facility in the City of Los Angeles under the control, operation or management of the Board of Recreation and Park Commissioners, the Los Angeles County Department of Parks and Recreation or the Los Angeles Memorial Coliseum Commission, no person shall:

(k) Sell or offer for sale any merchandise, article or thing of any kind or nature whatsoever unless such person possesses a written consent of said board, department or commission."

The evidence showed that while the defendant was outside the north entrance of the Coliseum, he asked an undercover police officer if the latter wanted to buy three tickets for that afternoon's Rams football game at face value. Defendant was arrested after he told the officer that he had no permit. Signs posted in the area stated that it was illegal to sell tickets and referred to both the ordinance section under consideration here and another section (section 42.03 of the Los Angeles Municipal Code) as to which no change was made. Defendant testified that he was a college student and the three tickets admitted into evidence were his father's season tickets, with his father's name on them. He stated that his brother and he went to the game with his father's tickets and that his father had decided to stay home and watch the game on television. Just before they left home, a friend of their father's decided to stay home and watch the game on television also and so he offered his two tickets to defendant's father who gave them to his

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1 sons. They decided to take them because they were better seats
2 than their father had. Upon arriving at the Coliseum, they saw
3 other people selling tickets and defendant decided it would be all
4 right if he did the same, as long as he did not sell the tickets
5 for more than face value. He stated that he did not offer them to
6 anyone for more than face value and he did not know it was illegal
7 to sell the tickets. On cross-examination, he stated that he had
8 been to the Coliseum before, but had never noticed the signs posted
9 there which state that resale of tickets is illegal nor had he
10 noticed a message on the back of the tickets which refers to sec-
11 tion 4203.

12 This case is presented to us against a background of other
13 decisions invalidating laws restricting or prohibiting the sale of
14 tickets (Ex Parte Quarq [1906] 149 Cal.79; In re Dees [1920] 46
15 Cal.App.656; People v. Van Wong [1958] 165 Cal.App.2d Supp. 821).
16 We need not attempt to determine if the holdings of any of those
17 decisions otherwise apply here, because, as will be developed, the
18 ordinance under scrutiny must fall in its application to appellant
19 since it is not accompanied by any standards or by any safeguards
20 adequate to assure that the legislative power delegated to the Los
21 Angeles Memorial Coliseum Commission is not abused.^{1/}

22
23 ^{1/} We do not pause to analyze in this opinion the effect of changing
24 due process concepts concerning the right of government to exercise
25 the police power. Compare, for example, Ex Parte Quarq, *supra*, 149
26 Cal.79, with State Board v. Thrift-D-Lux Cleaners [1953] 40 Cal.2d
27 438 and with the statement in Doyle v. Board of Barber Examiners
28 [1963] 219 Cal.App.2d 504, 514: "As we understand current doctrine,
judicial examination of a statute under economic due process attack
is completed when any fact or facts appear which the Legislature
might rationally have accepted as the basis for a finding of public
interest." Our holding that the ordinance contains insufficient
standards and safeguards makes it unnecessary to explore this issue.

1 The People have admitted that there are no written guide-
2 lines for the Coliseum Commission's determination whether to grant
3 the written consent referred to in the ordinance. Appellant argues
4 that the ordinance unconstitutionally interferes with his right to
5 acquire, possess and dispose of personal property, that it has no
6 reasonable relation to a proper exercise of the police power, and
7 that it is unconstitutionally broad. We find it unnecessary to
8 consider these contentions because we agree with appellant's further
9 argument that the fact that there is no basis stated for the grant
10 or denial of such written consent invalidates the ordinance.

11 By providing that no articles shall be sold in public parks
12 or recreational facilities in the City of Los Angeles unless a
13 written consent is given by the Board, Department or Commission
14 involved, the ordinance of necessity delegates to the administra-
15 tive agency discretion to determine the circumstances under which
16 it will grant such consent. The doctrine prohibiting delegation of
17 legislative power applies to the legislative powers of a city
18 (Kugler v. Yocum [1968] 69 Cal.2d 371, 375).

19 Legislative power, "may properly be delegated if channeled
20 by a sufficient standard. 'It is well settled that the legislature
21 may commit to an administrative officer the power to determine
22 whether the facts of a particular case bring it within a rule or
23 standard previously established by the legislature'"
24 *Id.*, at pages 375-376; quoting Dominquez Land Corp. v. Daugherty
25 [1925] 196 Cal.468, 484.

26 In Dillon v. Municipal Court [1971] 4 Cal.3d 860, a municipal
27 ordinance made it unlawful to participate in any parade or demon-
28 stration on the public streets or sidewalks of a city without first

1 obtaining a permit from the city. The Supreme Court said of the
2 ordinance provision, "The glaring and fatal defect in the section,
3 however, is that it contains no standards whatsoever -- let alone
4 standards designed to be 'narrow, objective and definite' -- to
5 guide and govern the city officials in their decisions to grant or
6 deny permits. As the Supreme Court said in Niemotko v. Maryland,
7 supra, 340 U.S. at p. 272 [95 L.Ed. at p. 271], 'No standards
8 appear anywhere; no narrowly drawn limitations; no circumscribing
9 of this absolute power; no substantial interest of the community
10 to be served. It is clear that all that has been said about the
11 invalidity of such limitless discretion must be equally applicable
12 here.' [¶] In short, the section is a barefaced example of uncon-
13 trolled discretion." Cited 4 Cal.3d at page 870. See also Dulany
14 v. Municipal Court [1974] 11 Cal.3d 77, 86.

15 " . . . An unconstitutional delegation of power
16 occurs when the Legislature confers upon an administra-
17 tive agency the unrestricted authority to make funda-
18 mental policy determinations. (Citations omitted.)
19 To avoid such delegation, the Legislature must provide
20 an adequate yardstick for the guidance of the adminis-
21 trative body empowered to execute the law. . . ."

22 Clean Air Constituency v. California State Air
23 Resources Bd. [1974] 11 Cal.3d 801, 816-817.

24 The requirements for standards "is but one method for the
25 effective implementation of the legislative policy decision; the
26 requirement possesses no sacrosanct quality in itself so long as
27 its purpose may otherwise be assured." Kugler v. Yocum, supra,
28 69 Cal.2d at page 381. Safeguards inherent in a statute which

1 protect against its arbitrary exploitation and are adequate to pre-
2 vent abuse of the delegated legislative power may obviate the need
3 for standards. (Id. at 381-382.) See also, Southern Pacific Trans-
4 portation Co. v. Public Utilities Commission [1976] 18 Cal.3d 308,
5 313. Discretion legally vested in an administrative body cannot be
6 arbitrarily exercised so as to "affect capriciously the property or
7 property rights of persons subjected to" the administrative control
8 of an agency. Walsh v. Kirby [1974] 13 Cal.3d 95, 103, 105-106.

9 The ordinance here prohibits sales of any kind of property,
10 anywhere on any park or recreational facilities in the City of Los
11 Angeles unless administrative consent, unguided by any standard
12 mentioned in the ordinance, is first given. The City Council in
13 enacting the ordinance has not furnished any guideline whatsoever
14 through the boards and commissions charged with administering the
15 ordinance. Despite the opportunity which the ordinance gives to
16 those administrative bodies to allow sales where there is no police
17 power reason to restrict them, the ordinance furnishes no guidelines
18 to the exercise of such power.

19 The tickets attempted to be sold by appellant here were
20 property which appellant had a right to sell, absent valid con-
21 tractual limitations. Ex Parte Quarq, supra, 149 Cal.79, 80-81;
22 see People v. Davenport [1937] 21 Cal.App.2d 292, 296-297; People v.
23 Pace [1925] 73 Cal.App.548, 561. The ordinance involved here
24 sharply limits a right protected by the Constitution of California
25 as inalienable (Article I, section 1): "All people are by nature
26 free and independent and have inalienable rights. Among these are
27 . . . , acquiring, possessing, and protecting property"
28 This right "includes the right to dispose of such property in such

1 innocent manner as he pleases, and to sell it for such price as he
2 can obtain in fair barter. Any statute which interferes with this
3 right, except in cases where the public health, morals, or safety,
4 or the general welfare authorizes such restriction as an exercise
5 of the police power, is, to the extent of such interference, un-
6 constitutional and void. (8 Cyc. 886.) These rights are in fact
7 inherent in every natural person, and do not depend on constitu-
8 tional grant or guaranty. Under our form of government by consti-
9 tution, the individual, in becoming a member of organized society,
10 unless the constitution states otherwise, surrenders only so much
11 of these personal rights as may be considered essential to the just
12 and reasonable exercise of the police power in furtherance of the
13 objects for which it exists." Ex Parte Quarq, supra, 149 Cal. at
14 page 80.

15 Speaking of this power the Supreme Court said in State Board
16 v. Thrift-D-Lux Cleaners [1953] 40 Cal.2d 438, 440, "Under the law
17 generally that power extends to legislation enacted to promote the
18 public health, safety, morals and general welfare. It has rightly
19 been said that 'such [police] regulations may validly be imposed if
20 they constitute a reasonable exertion of governmental authority for
21 the public good. If there is a proper legislative purpose, a law
22 enacted to carry out that purpose, if not arbitrary nor discrimina-
23 tory, must be upheld by the courts.' (In re Fuller [1940] 15 Cal.2d
24 425, 428 [102 P.2d 321].) However, in the exercise of the police
25 power the law places limits on the discretion of the Legislature.
26 Whether there has been a reasonable exercise of this power is a
27 / / / /
28 / / / /

1 court question."^{2/}
2 The judgment is reversed.
3 CERTIFIED FOR PUBLICATION.
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We concur:

Cole
Presiding Judge
Albin
Judge
Wheeler
Judge

23 ^{2/} In 1976 this court in an unpublished opinion upheld the validity
24 of the very ordinance here involved. In their brief, counsel for
25 the People cited our decision in that case, in apparent violation
26 of Rule 977 of the California Rules of Court. Appellant has moved
27 that the reference be stricken. Because of the result which we
28 reach in this case, based on reasoning not articulated by us in the
unpublished opinion, we find it unnecessary to determine the con-
sequences of a violation of Rule 977 or to express an opinion as to
the validity of that rule.

/ / / /

Los Angeles, Cal. NOV 7 - 1977, 19____
TITLE { People v. Shepherd } No 30932
The Court . . .

^{8x}
PETITION FOR REHEARING DENIED.

CLAY ROBBINS, Clerk

92449-112 6-77 9M ① OSP

APPENDIX "B"

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102
DEC 15 1977

I have this day filed Order. _____

HEARING DENIED

In re: 2 Crim. No. 30932
People

vs.
Shepherd

Respectfully,

G. E. BISHEL
Clerk

90497-877 4-77 9M OSP

AMENDMENT I TO THE CONSTITUTION
OF THE UNITED STATES OF AMERICA

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

LOS ANGELES MUNICIPAL CODE

§63.51(k)

"Within the limits of any public park or recreational facility in the City of Los Angeles under the control, operation or management of the Board of Recreation Park Commissioners, the Los Angeles County Department of Parks and Recreation or the Los Angeles Memorial Coliseum Commission, no person shall:

"

"(k) Sell or offer for sale any merchandise, article or thing of any kind or nature whatsoever unless such person possesses a written consent of said board, department of commission."

LOS ANGELES MUNICIPAL CODE

§42.03

"Selling of tickets of admission to places of public assemblage in public places and places open to the public --

Exceptions:

(a) Except as otherwise provided in this section, no person in or upon any public street, sidewalk, park or other public place shall sell or resell or offer to sell or resell any ticket of admission to a place of public assemblage.

(b) Except as otherwise provided in this section, no person in or upon any place which is open to the public shall sell or resell or offer to sell or resell any ticket of admission to a place of public assemblage.

(c) The provisions of subsection (a) and (b) of this section shall not include or apply to the sale of such tickets at

or from any ticket office, booth or other similar place regularly and permanently established and maintained therefor with the express permission and authorization of the person or governmental agency in charge, care or control of the property where such office, booth or place is located.

(d) For purposes of this section, the following words and phrases are defined as follows:

(1) 'Place of Public Assemblage' shall mean every place of public amusement or entertainment, stadium, auditorium, theater, athletic field, concert hall or arena which is open to the public upon compliance with the requirements of admission thereto.

(2) 'Place Open to the Public' shall mean every place of public amusement or entertainment, stadium, auditorium, theater, athletic field, concert

hall or arena and the property upon which such place is located or any other property contiguous thereto which is under the same care, management or control."

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the within cause. On March 14, 1978, I deposited in the United States Mail, in a sealed envelope with postage thereon fully prepaid, addressed to the following, three copies of the Petition for Writ of Certiorari herein:

Burt Pines, City Attorney

1700 City Hall East

Los Angeles, California 90012

Attention: James M. Hodges, Esq.

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Place of mailing: Beverly Hills,

California.

Executed this 14th day of March,
1978, at Beverly Hills, California.

Gay Shively